

### **Remarks**

Applicants have canceled claims 1 and 3-24 without prejudice or disclaimer and added new claims 25-36. Accordingly, upon entry of the present amendment, original claim 2, and new claims 25-36 will be pending. Applicants hereby reserve the right to pursue canceled subject matter in subsequently filed continuing applications.

New claims 25-36 have been added in order to claim additional embodiments of the subject matter of the provisionally-elected group. Support for these claims can be found throughout the specification as filed. In particular, support for new claims 25-36 can be found, for example, at page 34, line 7 to page 37, line 17; and at Table 1A, page 93, row 5.

In addition, the title has been amended to reflect the provisionally elected sequence. Accordingly, no new matter has been added and entry of the present amendment and remarks are respectfully solicited.

#### **I. The Restriction Requirement**

Pursuant to the Office Action, mailed April 15, 2004, the Examiner has required an election under 35 U.S.C. § 121 of one of Groups 1-225. In addition, should any one of Groups 1-225 be elected, the Examiner has required Applicants to select one polypeptide as set forth in Table 1 from SEQ ID NO:Y. The Examiner contends that the inventions are distinct and have acquired a separate status in the art as shown by their different classification. Page 6, paragraph 2.

In response, Applicants provisionally elect, *with traverse*, the invention of Group 26-50, represented by new claims 25-36, drawn to polypeptides corresponding to SEQ ID

NO:62, for further prosecution. Applicants are unclear which of the Groups 26-50 is directed to SEQ ID NO:62, but intend to provisionally elect that group. Applicants reserve the right to file one or more divisional applications directed to non-elected inventions should the restriction requirement be made final. Applicants point out that claims 1 and 3-24 have been canceled without prejudice or disclaimer, and that new claims 25-36 are directed to subject matter falling within the ambit of Group 26-50 as cast by the Examiner.

With respect to the Examiner's division of the invention into 225 groups and the reasons stated therefore, Applicants respectfully disagree and traverse. Even assuming, *arguendo*, that Groups 1-225 represented distinct and independent inventions, restriction remains improper unless it can be shown that the search and examination of all groups would entail a "serious burden." M.P.E.P. § 803. In the present situation, although the Examiner has stated that the inventions have "separate status in the art as shown by their different classifications" (Page 6, paragraph 2), Applicants nonetheless submit that a search of the claims of any of the groups would also provide useful information for the claims of the other groups. For example, in many if not most publications disclosing a protein, the authors also disclose nucleic acids encoding the protein, and antibodies to the protein. Thus, since the searches for proteins, nucleic acids encoding such proteins, and antibodies to such proteins commonly overlap, the combined search and examination of such compositions would not entail a serious burden.

Accordingly, in view of M.P.E.P. § 803, the claims of all of Groups 1-225 should be searched and examined together in the present application. Applicants therefore respectfully request that the restriction requirement under 35 U.S.C. §§ 121 and 372 be reconsidered and withdrawn.

Applicants retain the right to petition from the restriction requirement under 37 C.F.R. § 1.144.


**Conclusion**

Entry of the above amendment is respectfully solicited. In view of the foregoing remarks, Applicants believe that this application is now in condition for examination, and an early notice to that effect is urged. The Examiner is invited to call the undersigned at the phone number provided below if any further action by Applicants would expedite the examination of this application.

Finally, if there are any fees due in connection with the filing of this paper, please charge the fees to our Deposit Account No. 08-3425. If a fee is required for an extension of time under 37 C.F.R. § 1.136, such an extension is requested and the appropriate fee should also be charged to our Deposit Account.

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Respectfully submitted,

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